

# CHANGE REQUEST COVER SHEET

**Change Request Number:** 10-32

**Date Received:** 9/14/2009

**Title:** Real Estate Guidance Update

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**Name:** Susan Freericks

**Phone:** 202-267-8374

**Policy OR Guidance:** Guidance

**Section/Text Location Affected:** Real Property Guidance - Sections 1.1.17 and 2.4.10.

**Summary of Change:** Updated changes for real property guidance to clarify and update areas.

**Reason for Change:** Need to make corrections to assist the RECOs.

**Development, Review, and/or Concurrence:** All Logistics Service Area Real Estate Offices, AGC-520

**Target Audience:** Real Estate Contracting Officers

**Potential Links within FAST for the Change:** N/A

**Briefing Planned:** No

**ASAG Responsibilities:** None

**Potential Links within FAST for the Change:** N/A

**Links for New/Modified Forms (or) Documents (LINK 1)** [null](#)

**Links for New/Modified Forms (or) Documents (LINK 2)** [null](#)

**Links for New/Modified Forms (or) Documents (LINK 3)** [null](#)

## SECTIONS EDITED:

Real Estate Guidance :

**Section 1.1.17 : Outgrant** [\[Old Content\]](#) [\[New Content\]](#) [\[RedLine Content\]](#)

Real Estate Guidance :

**Section 2.4.10 : Appendix J: Outgrant** [\[Old Content\]](#) [\[New Content\]](#) [\[RedLine Content\]](#)

## SECTIONS EDITED:

### **Section 1.1.17 : Outgrant**

**Old Content:** Real Estate Guidance :

#### **Section 1.1.17 : Outgrant**

Outgrants are to be used for when there is a secondary need for unused FAA lease/owned land or space by either another Government entity or third party. Outgrants were formerly known as outleases. The RECO must use the [Outgrant License Form](#) or the [Outgrant Permit Form](#). The License form is used for non-government entities. The Permit form is to be used for outgrants to Federal, State or Local government entities.

Questions and Answers:

Q1. Is an outgrant (either license or permit) considered a reimbursable?

A1. An outgrant license or permit is not considered a reimbursable agreement. RECO will use the designation of J under the PRISM system for an outgrant number. However if there is an associated reimbursable agreement number, the RECO can place it in the lease contract file as reference. Thus a RECO needs two separate document, an outgrant and reimbursable. A signed original outgrant documents is sent to accounting. Because the FAA is prohibited from augmenting its appropriations, FAA is only allowed to retain the monetary consideration equal to the FAA full costs incurred for the outgranted real property asset such as utilities. This fact does not preclude the RECO from negotiating fair market value (FMV) for the property which goes into the Treasury.

Q2. How can the cost be structured in an outgrant?

A2. RECOs will structure the cost of the outgrants with one of the following 1) based upon fair market value; 2) based upon the FAA cost only; or 3) or a no cost outgrant that specifies the non-monetary consideration of both parties.

Q3. Should outgrants specify the use of the property?

A3. Yes, the Outgrants need to state the specific use of the property, e.g., Agricultural use or mining rights.

Q4. Can outgrants have options?

A4. No, outgrants can be specified for a firm term not to exceed twenty years (see Q5). However they may not have options placed inside. The rationale for the duration of an outlease must be documented in the real estate file. An outgrant of an FAA leased property will never extend beyond the period of the FAA lease. Please note the period of the FAA lease does not include unexercised options.

Q5. Are outgrants revocable?

A5. Yes, an outgrant may be revoked by the Government at anytime during the term of the outgrant. All outgrants will contain an FAA revocation clause. In outgrants of FAA leased property, this revocation clause must be structured so that it allows the FAA to comply with all contractual termination rights of the lessor (which are other than default) contained in the FAA primary lease.

Q6. Can the licensee or permittee transfer the rights of the outgrant?

A6. Outgrants are issued exclusively to the licensee/permittee for time and for a specific purpose, the licensee/permittee has no rights under license/permit, subject to FAA's right to revoke the outgrant at will.

Q7. Does an emergency service agency who wants to receive an outgrant from us, can we waive the fee?

A7. The criteria is whether the other entity is government or private, not whether they are emergency services. If the emergency services or 911 party is another government entity (i.e. State, County, or City government), the RECO can waive the rent for use of our property. However they should make their own improvements, be liable for what it does, and ask for reimbursement for actual costs for FAA services (i.e. utilities, pro rata share of road maintenance, other services FAA renders for the other party and not the FAA). If reimbursement is required a separate Reimbursable Agreement should be executed.

If the emergency services party is a private entity, then we may need to compete the available space and a fair market value fee in lieu of rent may be charged that goes to the "Miscellaneous Receipts of the General Treasury", not the FAA. We should not give an unfair advantage to one entity over another. Further, if other private property is available nearby, the emergency service provider should go to that property and not government property.

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Q1. How is cost captured in an outgrant (either license or permit) and is it different from a reimbursable?

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A signed original outgrant document is sent to the Accounts Receivable department in accounting. With respect to amounts paid as consideration for the outgrant, the FAA may retain all outgrant proceeds in the account established pursuant to 49 USC 45303(c). Please check with ALO-200 for the account number. Consequently, the RECO must make every effort to negotiate a payment amount that is equal to the Fair Market Value (FMV) of the outgrant.

Q2. How can the cost be structured in an outgrant?

A2. The RECO will structure the cost of the outgrants with one of the following: 1) based upon fair market value; 2) based upon the FAA cost only; or 3) a no cost outgrant that specifies the non-monetary consideration of both parties.

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Q6. Can the licensee or permittee transfer the rights of the outgrant?

A6. Outgrants are issued exclusively to the licensee/permittee for limited time and for a specific purpose, the licensee/permittee has no rights under license/permit, subject to FAA's right to revoke the outgrant at will.

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If the emergency services party is a private entity, then the RECO may need to compete the available space and request a fair market value fee in lieu of rent to be charged that goes to the "Miscellaneous Receipts of the General Treasury", not the FAA. The FAA must not give an unfair advantage to one entity over another. Further, if other private property is available nearby, the emergency service provider should go to the private property and not the FAA.

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